

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No. 2761/2014 & CM 5725/2014 (stay)

% 2nd February, 2015

NARENDER SINGH RANA

..... Petitioner

Through: Mr. Sanjiv Joshi, Mr. Birender Singh
Rawat, Advocates

versus

DIRECTOR, NEHRU MEMORIAL MUSEUM
& LIBRARY

..... Respondent

Through: Mr. Chetan Gupta, Advocate

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner seeks a writ in the nature of *mandamus* or any appropriate writ for setting aside the advertisement dated 22nd to 28th June, 2013 for the post of Senior Technical Assistant – STA (Museum). Relief in the writ petition is claimed on the ground that the post of Senior Technical Assistant – STA (Museum) cannot be filled in by direct recruitment but can only be filled by promotion from departmental candidates. Relief is also prayed for promoting the petitioner to a post as per his eligibility and

seniority position and take appropriate steps to fill up the vacancies in accordance with law and as per the existing notified recruitment rules by holding a Departmental Promotion Committee (DPC).

2. The facts of the case are that the respondent/employer/Nehru Memorial Museum & Library issued the subject advertisement in June 2013 for appointment to the post of Senior Technical Assistant – STA (Museum). Petitioner in terms of the selection process participated in the written test and just before the interviews were to be conducted, filed this writ petition questioning the selection process on the ground that appointment of a Senior Technical Assistant – STA (Museum) in terms of the relevant rules of the respondent has to be by means of promotion and not by direct recruitment. The recruitment rules are filed as Annexure P-4 to the petition at page 29. Petitioner, therefore, contends that the entire selection process is flawed, and therefore has to be quashed because Senior Technical Assistant – STA (Museum) can only be appointed by promotion and not by direct recruitment.

3. In the counter affidavit, respondent has raised three main contentions in defence and which are as under :

(i) The recruitment rule which is relied upon by the petitioner is not the relevant recruitment rule because the relevant recruitment rule now entitles appointment to the post of Senior Technical Assistant – STA (Museum) by direct recruitment and by promotion in the ratio of 50% : 50% and that the Executive Council of the respondent in terms of its meeting dated 19.2.2013 has passed a resolution to this effect. This resolution dated 19.2.2013 with its agenda item no. 7 and the decision taken by the Executive Council has been filed from internal pages 24 to 28 of the counter affidavit filed by the respondent.

(ii) Respondent also contends that even if the post of Senior Technical Assistant – STA (Museum) has to be filled in only by means of promotion, yet, petitioner cannot seek appointment because the feeder cadre for the post of Senior Technical Assistant – STA (Museum) is a Senior Guide whereas the petitioner is working at a one step lower post of a Guide only, and therefore, the petitioner cannot make a claim to the subject post of Senior Technical Assistant – STA (Museum) by promotion.

(iii) Finally, it is contended in the counter affidavit that petitioner has participated in the selection process by appearing in a written test and petitioner is hence estopped from questioning the selection process in view of the

judgment of the Supreme Court in the case of *Manish Kumar Shahi Vs. State of Bihar and Ors.*, (2010) 12 SCC 576.

4. On behalf of the petitioner, the following arguments are urged before this Court:

(i) Amendments made to the Recruitment Rules/Service Bye Laws of the respondent are illegal because the respondent in terms of its memorandum of association can only do so with the prior approval of the Central Government and which approval is missing.

(ii) The vacancy in the present case is of the year 2011, and therefore, recruitment rule which has been amended w.e.f 2013 cannot apply with respect to the vacancy of the year 2011.

(iii) There were other persons who were appointed directly from the posts of Guide to the posts of Senior Technical Assistant – STA (Museum) viz Sh. Omprakash and Sh. Ranjit Kohli, and therefore, since such persons have been illegally given appointment to the posts of Senior Technical Assistant – STA (Museum), the petitioner should be given the appointment.

5. All the arguments urged on behalf of the petitioner are without any basis whatsoever and the writ petition is an abuse of the process of the law.

6. The first ground urged on behalf of the petitioner that the relevant rule has not been correctly amended by the Executive Council of the respondent is misconceived in view of the letter dated 4.4.2003 filed by the respondent, of the Government of India, Ministry of Tourism & Culture (parent Ministry of the respondent) and which shows that the respondent through its Executive Council is entitled to amend its Service Bye Laws and Recruitment Rules in case no financial implications are involved in the proposal. Therefore, once the parent Ministry of the respondent allows the respondent to generally amend the bye laws in terms of letter dated 4.4.2003 if there are no financial implications upon the Government, I do not think that the petitioner is entitled to argue on the basis of a clause in the memorandum of association that the respondent's Council could not have amended the Service Bye Laws. The Council of the respondent had the necessary powers to amend the bye laws, and so far as the prior approval is concerned, the letter of the Ministry of Tourism & Culture dated 4.4.2003 gives general approval and entitlement to amend the Service Bye-Laws and Recruitment Rules in case no financial implications are involved in the proposal. The first argument urged on behalf of the petitioner is, therefore, rejected.

7. The second argument urged on behalf of the petitioner that the vacancy in the present case is of the year 2011, and therefore, Recruitment Rules which have been amended w.e.f 2013 cannot apply with respect to the vacancy of the year 2011 is an argument which has to be rejected *in limine* because there is not even a whisper of this argument in the entire writ petition. If any aspect is argued before this Court, necessary foundation has first to be laid in the pleadings and which pleadings have to be supported by the relevant documents. Since in this case neither there exist the requisite pleadings nor the documents in support of the argument, the argument urged on behalf of the petitioner is therefore without any merit and is rejected. In fact, though the rejoinder affidavit need not be considered once the same would raise a new case, but at the request of the counsel for the petitioner I went through the rejoinder affidavit, however, even in the rejoinder affidavit no case is pleaded or made out that the vacancy in this case is of the year 2011, and therefore, the Executive Council has no entitlement in the year 2013 to amend the Recruitment Rules for a post which is of the year 2011. Therefore, the second argument urged on behalf of the respondent is also rejected.

8. The third argument raised on behalf of the petitioner that two other persons namely Sh. Omprakash and Sh. Ranjit Kohli, both of whom were

working as Guides and were appointed to the posts of Senior Technical Assistant – STA (Museum), and thus even the petitioner should also be appointed is once again a ground which is without any merit whatsoever because except stating this aspect in the rejoinder affidavit, no documents have been filed to substantiate this argument of the petitioner that Sh. Omprakash and Sh. Ranjit Kohli were only Guides when they were appointed as Senior Technical Assistants – STA (Museum). Self-serving averments in the absence of relevant documents cannot help the petitioner. Also, it is settled law that Article 14 of the Constitution is a positive concept and not a negative concept. A petitioner before the court of law cannot invoke Article 14 of the Constitution to commit an illegality by arguing that the petitioner be appointed directly from the post of a Guide to the post of Senior Technical Assistant – STA (Museum) allegedly because in the past two persons being Sh. Omprakash and Sh. Ranjit Kohli were illegally appointed as Senior Technical Assistants – STA (Museum) from the posts of Guide. I thus find no merit even in this argument, and the same is also rejected.

9. It is obvious that the petitioner after participating in the selection process viz the written test, came to know that he would not be successful in the process. After participating in the selection process petitioner suddenly in the middle of the selection process cannot turn around and question the

selection process and which he could only have done at the time of issuing of the advertisement and not in the middle of the selection process.

10. In view of the above, the writ petition is a gross abuse of the process of the law and the same is dismissed with costs of Rs. 25,000/-. Respondent is entitled to recover the costs from the petitioner in accordance with law.

FEBRUARY 02, 2015
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VALMIKI J. MEHTA, J